U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31282943

Date: JUL. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an attorney and managing partner at a Brazilian law firm, seeks classification as an individual of extraordinary ability in business. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

In the latest decision, the Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.[1] The matter is again before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international

[1] The Director denied the petition and dismissed the Petitioner's subsequent motion to reconsider, concluding that the record established that the Petitioner had satisfied only two of ten initial evidentiary criteria, of which he must meet at least three. The matter came before us on appeal from the dismissal of the motion, and we determined that the Petitioner met a third initial criterion. We, therefore, withdrew the Director's decision and remanded the matter for the Director to render a final merits determination in keeping with the framework set forth in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicates that since 1989 he has been an attorney, founder, and managing partner at the Brazilian law firm [redacted] where he specializes in transnational corporate law involving complex transactions in the areas of commercial, tax, and labor law. He received his Master of Laws (LL.M.) degree from the [redacted] in 1996. During his employment with EBA, the record shows that he also served as Judge of the [redacted] (2004-2005) and Judge of the [redacted] (2006-2008), and he also claims to have worked as a law professor.

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In her latest decision, the Director determined that the Petitioner met three of those criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The record reflects that the Petitioner satisfies these three evidentiary criteria. The documentation submitted indicates that the Petitioner authored scholarly works in professional publications, satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(vi). The record also shows he served as a member of multiple Ph.D. dissertation

committees that made the final judgment as to whether an individual candidate's body of work, within an allied field of specialization for which classification is sought, satisfied the requirements for a doctoral degree in Law, thus satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(iv).[2] Further, the record demonstrates that the Petitioner has held leading or critical roles with his current employer, [redacted] and includes evidence of the company's distinguished reputation in its field. *See* 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner contests the Director's determination that he did not satisfy the criteria related to awards for excellence, published material about him, original contributions of major significance, and significantly high remuneration, and asserts the Director did not consider the totality of the evidence in the record in making her determination. Because the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence, including evidence submitted in support of those criteria, in the context of the final merits determination below.[3]

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[4]

In this matter, we determine that the Petitioner has not shown his eligibility. As mentioned above, the Petitioner judged the work of others within his field, authored scholarly works, and performed in a leading or critical role. We have also considered evidence related to awards he received for his work at [redacted] published material that mentions him, his contributions to the field, and his salary and remuneration package with [redacted] The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it pertains to his service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this

[2] For example, the record indicates that the Petitioner served on a panel that evaluated Ph.D. candidates' thesis topics such as "The Import Tax Incidence Matrix Rule," "Participative Tax Law: Administrative Transaction and Arbitration of Tax Obligation," and "Typicity, Antijuridicity and Culpability in Tax Violations," and demonstrates that the work he judged in these instances falls within an allied field of specialization for which classification is sought.

[3] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[4] *Id.* at F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22.[5] The Petitioner provided evidence showing that he served as a reviewer on a panel judging Ph.D. theses at [redacted] most recently in 2010. The record also shows he served as Judge of the [redacted] (2004-2005) and Judge of the [redacted] (2006-2008). However, the Petitioner did not establish that his judging experience places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). In addition, the Petitioner did not demonstrate that his judging occurrences contribute to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his work as a thesis reviewer or tax judge. The Petitioner did not establish that his work as a Ph.D. thesis reviewer or tax judge resulted in or reflects his sustained international acclaim in the field, was recognized outside of those organizations, or places him among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Likewise, the publication of research does not automatically place one at the top of the field.[6] Here, although the Petitioner presented evidence showing that he authored two law books and a law book chapter between 1995 and 2005, he has not demonstrated that this publication record is consistent with having a "career of acclaimed work" or qualifies for this "very high standard." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704. In addition, he did not establish that his authorship of three published materials is reflective of being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner did not show that he has sustained national or international acclaim as his most recent published material, a book chapter, was last published in 2005. *See* section 203(b)(1)(A) of the Act.

Moreover, the citation history or other evidence of the influence of his publications can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. On appeal, the Petitioner maintains that the influence of his published work is evidenced by a letter he initially submitted from Justice [redacted], Justice of the [redacted] and founder of the [redacted]. Justice [redacted] asserted the Petitioner's book [redacted] (IOB 2003), "has introduced a new legal classification involving the taxation of electronic commercial transactions, which provoked widespread commentary among legal scholars, and has been cited extensively as an authoritative source in academic discussions as well as in legal cases."

The Petitioner, however, has not provided corroborating evidence that any of his authored works were used as a reference or established his works have been "widely" cited or utilized, and therefore,

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[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show the application of his written work by the field and that it represents attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his authored works to others in his field of endeavor that are recognized as already being at the top in his field.

Next, the record reflects that the Petitioner performed in a leading role in his current position as a managing partner for [redacted] since 1989. However, the Director found that the Petitioner did not demonstrate that his employment in this role is reflective of, or has resulted in, widespread acclaim from his field or that he is considered to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). On appeal, the Petitioner highlights the above letter from Justice [redacted] and a letter from [redacted] vice president of the board of legal and legislative affairs of the [redacted]

With regard to his previous employment with other entities, Justice [redacted] letter indicates that based upon the Petitioner's "stature as a leader in his field" he was appointed to serve as the first coordinator of the Post-Graduate and Extension courses of [redacted] between 2011 and 2014. Mr. [redacted] indicates that [redacted] supported the Petitioner's appointment to serve as Judge of the [redacted] (2004-2005) and Judge of the [redacted] (2006-2008). Neither Justice [redacted] nor Mr. [redacted] however, addresses how the Petitioner's positions were leading or critical to these organizations, nor did they provide details of how the Petitioner achieved national or international acclaim based on these positions. Apart from these letters, the record lacks other independent evidence, such as news articles or other relevant materials, demonstrating that the field has widely recognized the Petitioner's roles or contributions to his employers in a manner that evidences a "career of acclaimed work." The evidence does not show that his roles and achievements at these organizations are at a level that places him among "that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

As it relates to awards, the record reflects that the Petitioner and [redacted] were recognized by *Corporate INTL Magazine* with a 2020 [redacted] Award for [redacted] The evidence demonstrates that nominations are received from the readership of *Corporate INTL Magazine*, "all of which are either investors in business, leaders of companies or advisers of those businesses on a global level," and "other sources including our database[s]," and are made based upon "key work they have carried out for/with the person making the nomination over the past 12 months." In addition, the record shows that Petitioner's firm was ranked among the top [redacted] law firms from 2008 to 2015 by Analise Advocacia 500 legal profession yearbook. However, the record does not fully explain, or present sufficient evidence, regarding the selection processes for either award that would support the Petitioner's claim that they should be considered nationally or internationally recognized awards in the field, such as the number of competitors in the Petitioner's

category, or evidence of how colleagues select their top law firms, or evidence of the level of recognition associated with the awards.[7] Therefore, the documentation submitted does not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner's receipt of the awards established or contributed to his sustained national or international acclaim in the field.

Regarding published material, the Petitioner provided copies of five articles. Two of those articles, published in the print version of the Brazilian publication *Valor* in 2006 and 2009, do not identify an author of the material. The inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii). The remaining articles were not about the Petitioner relating to his work but were about recent trends in the field. For example, a 2016 article from Bloombergnews.com about Brazilian investors having bid up stocks in anticipation of the country's recovery from recession, quotes the Petitioner, among several financial advisors, who opines that [redacted] A 2015 *Washington Post* article titled [redacted] quotes the Petitioner who states, [redacted] The Petitioner also provided a 2003 article from *Valor* which quotes him as confirming the ouster of the firm of [redacted] from the legal consulting field and his firm's acquisition of [redacted]

Further, the Petitioner did not demonstrate that three articles, published in 2003, 2015, and 2016, are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. The Petitioner also did not show that his overall press coverage is indicative of a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner did not establish that the limited media reporting reflects a "career of acclaimed work in the field" or a "very high standard . . . to present more extensive documentation than that required." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704.

Further, the Petitioner provided expert letters from several individuals in the Petitioner's field.[8] In general, the letters summarize the Petitioner's professional accomplishments and work history. The letters, however, do not explain how the Petitioner's achievements have been considered by the field to be of major significance. Moreover, they do not contain detailed information showing the unusual influence or high impact his contributions have had on the overall field. For instance, in his letter, Justice [redacted] provides that in 2013 the Petitioner successfully argued a case before the [redacted] which resulted in a portion of a 1994 law being declared unconstitutional that had required the Petitioner's [redacted] Although Justice [redacted] asserts that the Petitioner "exercised significant influence in the Brazilian legal field" because the holding in the case applies "to all 26 Brazilian States and the Federal District," he does not address, for example, whether references to that case are indicative of its significant impact in the field, nor does his letter sufficiently support the assertion that the Petitioner

[7] For instance, according to the 2008 edition of its yearbook, Analise Advocacia 500 collected the names of the 1,263 most admired law firms according to the legal departments of the largest companies in Brazil.

[8] While we discuss a sampling of letters, we have reviewed and considered each one.

is considered among that small percentage at the very top of his field of endeavor or how he has garnered sustained national or international acclaim.

In addition, the Petitioner submitted a letter from [redacted], a labor law attorney. We note that Mr. [redacted] letter is not on letterhead and does not include an address, a telephone number, or any other information through which he can be contacted, thus reducing its probative value. Mr. [redacted] states that the Petitioner in his law firm was "responsible for the conception and successful implementation of a highly innovative model for the large scale management of lawsuits across Brazil called [redacted] He asserts that the Petitioner's model "was absorbed by software and legal technology companies, and today became the standard model used by law firms, companies and government (Judiciary Power and Executive Power)." He described the model as "the most revolutionary development involving large-scale case management in the Brazilian legal industry" which "has significantly influenced the Brazilian legal market for the past 20 years."

However, the record does not contain any other evidence related to this model or the Petitioner's role in its development. As a result, we are unable to determine, for example, when the model was introduced, whether the model was regarded as novel or original at the time of its introduction, whether or how it impacted the field of complex case management, or whether and to what extent the Petitioner garnered sustained national or international acclaim or recognition as a result of his work on its development.

The Petitioner also did not establish, as he asserts, that the above awards from *Corporate INTL Magazine* and the Analise Advocacia 500 legal profession yearbook were indicative of original business contributions of major significance in the overall field, for example, that they were awarded based on a determination that his contributions made a significant impact on the field; nor do they demonstrate that he is among that small percentage at the very top of his field of endeavor or that he has sustained national or international acclaim.

The Petitioner also claims that his extraordinary ability is reflected in his annual compensation package. The record reflects that he received total compensation of R$10,713,428 in 2015 (taxable income of R$55,965 and non-taxable, profit-sharing income of R$10,657,463.) The Petitioner provided salary data for attorneys in Brazil from Salaryexplorer.com and Payscale.com. The Director found insufficient evidence to establish that he earns a high salary or other significantly high remuneration in relation to other managing partners. While the Petitioner argues that his total compensation is considerably higher that the figures reported for attorneys by the above resources, the Petitioner did not provide supporting evidence that would allow a comparison between his total remuneration and that of other similarly employed workers in his geographic area. Therefore, the evidence does not establish that he receives total remuneration that is "significantly high" or that his earnings are comparable to those of individuals at the very top of the field.

Considering the totality of the evidence and the Petitioner's arguments on appeal, we conclude that the record, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field. For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.